IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4113 OF 2001.

Pallab Krishna Nityanand Bose
and another. ... Petitioners.

Versus.

Rupee Cooperative Bank Ltd.
and others. ... Respondents.

Shri V.P.Sawant holding for Shri A.S.Gadkari for the Petitioners.

Shri Prashant Naik for the Respondent No.1.

CORAM : ABHAY S.OKA, J.

DATED : 18th April, 2007.

P.C.:

1. Heard the learned Counsel for the Petitioner and the learned Counsel for the 1st Respondent. Notice has been served to the rest of the Respondents. In any event, except the 1st Respondent, the other Respondents may not be necessary parties considering the nature of the order which is proposed to be passed.

2. The 1st Respondent filed a dispute under section 91 of Maharashtra Cooperative Societies Act, 1960 in the Cooperative Court at Pune for recovery of an amount outstanding from the 2nd Respondent. The present Petitioners were also impleaded as parties to the dispute as the case of the 1st Respondent was that they were jointly and severally liable alongwith the second

Respondent.

3. The dispute filed by the 1st Respondent was decided by the Cooperative Court by Judgment and order dated 26th February 1999. On 2nd March 2001, the Petitioners preferred an Appeal against the Award made by the Cooperative Court. As there was a delay in preferring the Appeal, an Application for condonation of delay was made by the Petitioners. By the order impugned dated 27th June 2001, the learned Member of the Maharashtra Cooperative Appellate Court (Mumbai Bench) dismissed the application for condonation of delay. By this writ petition under Article 227 of the Constitution of India, the petitioners have challenged the order passed by the Appellate Court.

4. The contention of the learned Counsel for the Petitioners is that the Award made by the Cooperative Court was without notice to the Petitioners. It is submitted that when the Petitioners received a notice on 16th January 2001 from the 1st Respondent-Bank calling upon them to pay the amount as per the Award, the Petitioners became aware that an Award has been made. He submitted that considering the grounds made out in the Application for condonation of delay, the Appellate Court ought to have condoned the delay.

5. The learned Counsel for the 1st Respondent opposed the petition by contending that all along the petitioners were having the knowledge of the pendency of the dispute and the Award made by the Cooperative Court. He submitted that no sufficient cause was made out for the condonation of delay which was of more than one year.

6. I have considered the submissions. I have also perused the averments made in the Application for condonation of delay filed by the Petitioners. The case made out by the Petitioners was that till 16th January 2001, they were not aware about the award. It is true that the said case made out by the Petitioners has been disputed by the 1st Respondent. The contention of the 1st Respondent is that even earlier the Petitioners were aware about the Award.

7. It is a well settled position of law that while dealing with the Application for condonation of delay, the Court has to adopt a liberal and justice oriented approach. An occasion for condonation of delay arises only when there is some default on the part of a litigant. The 2nd Respondent is the borrower-company and the Petitioners were impleaded as opponents in the dispute as they were allegedly the directors of the 2nd Respondent-company and the guarantors. Considering the

large claim involved in the matter, the Appellate Court ought to have condoned the delay subject to payment of heavy costs so that the 1st Respondent would have been compensated on account of the prejudice caused by the condonation of delay.

8. In my view, the delay deserves to be condoned by ordering the Petitioners to pay heavy costs. The learned Counsel for the Petitioners has handed over a demand draft in the sum of Rs.25,000/- to the learned Counsel for the 1st Respondent by way of costs. He assures the Court that the demand draft will be encashed.

9. The learned Counsel for the 1st Respondent made a grievance that the Petitioners have been granted blanket stay from 5th September 2001. The learned Counsel for the Petitioners submitted that as this Court is condoning the delay and as the ad-interim relief has been operating for such a long time, to avoid any further multiplicity of the proceedings the Appeal may be directed to be disposed of in a time bound manner and ad-interim relief granted by this Court may be continued till then.

10. The ad-interim relief has been granted by this Court on 5th September 2001 at the stage of admission

when the notice was not served on the 1st Respondent. It will be for the Petitioners to apply before the Appellate Court for grant of interim relief pending the final disposal of the Appeal. To enable the Petitioners to apply before the Appellate Court, ad-interim relief granted by this Court can be continued for a reasonable time.

11. Hence the following order is passed:

(i) The impugned Judgment and Order dated 27th June 2001 is quashed and set aside and Misc.Application No.41 of 2001 filed by the Petitioners is allowed subject to payment of costs of Rs.25,000/- by the Petitioners to the 1st Respondent. The amount of costs has been paid by the Petitioners to the 1st Respondent by handing over a demand draft in the sum of Rs.25,000/- to the learned Counsel for the 1st Respondent.

(ii) The Maharashtra State Cooperative Appellate Court will hear and decide the Appeal as expeditiously as possible. Ad-interim relief granted by this Court on 5th September 2001 will continue to

operate for a period of ten weeks from today to enable the Petitioners to apply for interim relief before the Appellate Court.

(iii) If the Application for grant of interim relief is made by the Petitioners, the same shall be decided by the Appellate Court on its own merits.

(iv) Writ petition is allowed in the above terms.

(v) The parties and the Court below to act on an authenticated copy of this order.

Judge.